

1178/H-1175/H



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. ICTR-98-44-  
AR116  
Date: 27 January 2006  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Mohamed Shahabuddeen, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Mr. Adama Dieng

**Decision:** 27 January 2006

ICTR Appeals Chamber  
Date: 27 January 06  
Action: R.V.  
Copied To: Concerned Judges,  
Parties, Judicial Archives,  
LDs, LSS [Signature]

**PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

FILED 27 JAN 29  
[Signature]  
JUDICIAL ARCHIVES

**Decision on Request for Extension of Time**

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. James Stewart  
Mr. Don Webster  
Mr. Gregory Lombardi

**Counsel for the Accused:**

Ms. Dior Diagne and Mr. Moussa Félix Sow for Édouard Karemera  
Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Mathieu Ngirumpatse  
Mr. Peter Robinson for Joseph Nzirorera

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORMÉ À L'ORIGINAL PAR MOI  
NAME / NOM: ROSETTE MUZIGO-MORRISON  
SIGNATURE: [Signature] DATE: 27/01/06

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "International Tribunal", respectively) is seized of the "Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (Rule 73(C))", filed by the Prosecution on 9 December 2005 ("Prosecution's Interlocutory Appeal"). The Appeals Chamber is also presently seized of the "Requête de M. Ngirumpatse aux fins d'extension du délai de réponse sur le 'Prosecutor's Interlocutory Appeal of Decision on Judicial Notice'", filed on 16 December 2005 by the accused Mathieu Ngirumpatse ("Request" and "Accused", respectively).

2. In the Request, the Accused explains that he has not yet received French translations of several documents initially filed in English: the Prosecution's request for judicial notice filed before the Trial Chamber;<sup>1</sup> the responses of his co-accused to the judicial notice request and the Prosecution's reply; the Trial Chamber's Decision on Prosecution Motion for Judicial Notice ("Impugned Decision", filed on 9 November 2005); the Prosecution's request for certification of that decision for interlocutory appeal; the responses of his co-accused to the certification request and the Prosecution's reply; the Prosecution's Interlocutory Appeal; and the response of his co-accused to the Prosecution's Interlocutory Appeal. He requests those translations and asks for an extension in the deadline for filing his response to the Prosecution's Interlocutory Appeal.<sup>2</sup>

3. Rule 116 of the Rules of Procedure and Evidence of the International Tribunal allows for extensions of time upon a showing of good cause, and paragraph (B) of that Rule specifically provides that where "the ability of the accused to make full answer and Defence depends on the availability of a decision in an official language other than that in which it was originally issued, that circumstance shall be taken into account as a good cause".

4. Counsel to the Accused operates in French and not in English. It is clear that, in order to be able to make a full answer to the Prosecution's Interlocutory Appeal, he needs access to French translations both of that Appeal itself and of the Impugned Decision from which the Prosecution is appealing. His present lack of access to these translations constitutes good cause for a reasonable delay in filing his response to the Prosecution's Interlocutory Appeal.

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<sup>1</sup> Motion for Judicial Notice of Facts of Common Knowledge and Adjudicated Facts, 30 June 2005.

<sup>2</sup> Request, para. 14.

5. The Accused has not demonstrated that access to translations of the other documents he requests—namely, the filings of the various parties before the Trial Chamber on the judicial notice and certification issues, as well as his co-accused's filing before the Appeals Chamber—is necessary to enable him to prepare his response to the Prosecution's Interlocutory Appeal, or that lack of access to them otherwise constitutes good cause for a delay in filing his response. The Impugned Decision, as well the Trial Chamber's Certification of Appeal Concerning Judicial Notice ("Certification Decision", filed on 2 December 2005), summarize and decide upon the arguments set forth by the parties in their filings before the Trial Chamber, and provide all the necessary information to enable the Accused to complete his response. For this reason, and because there may be some dispute as to the scope of the certification for interlocutory appeal,<sup>3</sup> the Appeals Chamber will direct the Registry to ensure that the Certification Decision is translated, even though it was not specifically requested by the Accused. As to the filing of his co-accused Mr. Nzirorera on appeal, at least under the present circumstances, in order to prepare his own response it is not necessary for the Accused to review the responses of his co-accused. Ordinarily, those responses would have been due on the same day, and so it cannot be said that either co-accused is entitled to read the response of the other before preparing his own.

6. Although a reasonable extension of time is merited, the Accused has not justified his request for 17 days beyond the filing of the requested translations. Responses to interlocutory appeals are ordinarily due within 10 days of the appeal's filing,<sup>4</sup> so 10 days should be adequate time to enable the Accused to prepare his response after he has the necessary translations. The Appellant argues that he is entitled to a longer delay as compensation for delays to which he should have been entitled in the proceedings before the Trial Chamber, in light of the fact that he did not have the translations he needed at that stage.<sup>5</sup> This argument does not amount to good cause. It is a moot point at this stage whether the Accused should have had access to the translations during the briefing process before the Trial Chamber, and/or whether he should have received extensions of time at that stage. Even if the Trial Chamber had erred in those respects, its error could not be corrected by an extension of time being granted now.

<sup>3</sup> One of the co-accused has requested that some of the Prosecution's arguments on appeal be dismissed for exceeding the scope of the certification. See Joseph Nzirorera's Motion to Dismiss Issues of Interlocutory Appeal for Which Certification Was Not Granted, 13 December 2005.

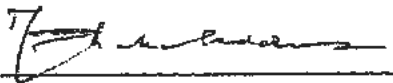
<sup>4</sup> Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, part II(2) (applying this time limit in appeals as of right); *ibid* part III(2) (applying the same time limit in appeals granted by leave of the Appeals Chamber); *ibid* part I (applying the rules set forth by parts II and III *mutatis mutandis* in other interlocutory appeals).

<sup>5</sup> Request, para. 14.

7. Counsel to co-accused Édouard Karemera also operate in French, and Mr. Karemera's failure to file a timely response to the Prosecution's Interlocutory Appeal may also be excused on the basis that the defence lacked access to necessary translations. Although Mr. Karemera has not filed a request for an extension of time, it is in the interests of justice to permit him to benefit from the extension being granted to Mr. Ngirumpatse, if he should choose to file a response.

8. For the foregoing reasons, the Request of the Accused is GRANTED in part. The Registry is DIRECTED to provide to the Accused and his co-accused, on an urgent basis, French translations of the Impugned Decision, the Certification Decision, the Prosecution's Interlocutory Appeal including its annexes, and the present decision. Starting from the date at which the last of these four translated documents is transmitted to the Accused as well as his co-accused Mr. Karemera, they will be permitted 10 days to file their responses to the Prosecution's Interlocutory Appeal.

Done 27 January 2006  
At The Hague  
The Netherlands

  
Judge Mohamed Shahabuddeen,  
Presiding



[Seal of the Tribunal]